IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-10-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

O.S.A.NOs.275 to 280 OF 2002
and
CMP.NOs.4439, 4444, 4343, 4850 of 2005

Archean Granites Pvt. Ltd. .. Appellant in all OSAs

Vs.

1. RPS Benefit Fund Limited,
   rep. by the Official Liquidator

2. ICICI Bank Ltd.,
   (Formerly Bank of Madura Ltd.,)
   Mount Road Branch,
   192, Anna Salai, Chennai 2.

3. M. Muthusamy,
   Addl. Administrator
   R.P.S.Benefit Fund Ltd.,
   Madras Bar Association,
   Chennai 104.

(Respondents 2 and 3 are impleaded
as per order dated 9.10.2003 and
17.11.2003 in CMP.Nos.15227/03,
to 15229/03, 15272/03, 10051/02, 10056
to 10061/02 and 16827/03 to 16829/03
& 17053/03, 16830/03,
16831/03 respectively) .. Respondents in all OSAs

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Appeals filed under Clause 15 of Letters patent read with Section 483 of the Companies Act, 1956 against the common judgment dated 30.4.2002 passed by the learned single Judge in Application Nos.2047 to 2052 of 2000 in C.P.NOs.233 to 238 of 1999.

For Appellants in all OSAs : Mr.S. Sampath Kumar
Senior Advocate for
Mr.A.R. Karunakaran

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For Respondents 1&3 in all OSAs : Mr.Aravind P. Dattar
Senior Advocate for
Mr.M. Muthusamy
Addl. Administrator
and for Official Liquidator

Respondent-2 in all OSAs : Mr.P.L. Narayanan

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COMMON JUDGMENT

P.K. MISRA, J

The present appeals have been filed against the common order dated 30.4.2002 in Appln.Nos.2047 to 2052 of 2000 arising out of C.P.NOs.233 to 238 of 1999. Such applications were filed by the present appellant with a prayer that the sale deed executed by M/s.R.P.S. Benefit Fund Limited in favour of the appellant is valid and binding, and cannot be challenged in the winding up proceedings relating to M/s.R.P.S. Benefit Fund Ltd., with a further prayer to permit the appellant to pay the balance amount due to the Bank of Madura Ltd., and to get the original documents of title from the said Bank.

2. The basic allegations in such applications are as follows :-

M/s.R.P.S. Benefit Fund Ltd., is a Company registered under the Companies Act. The said Company had purchased the disputed property by a sale deed dated 10.8.1995. Subsequently the said property was mortgaged to the Bank of Madura Ltd., by the Company by way of deposit of title deeds for a loan amount of Rs.60 lakhs. Since the Company started facing pressure from the depositors as well as from the Bank of Madura, an advertisement was taken out for sale of such property, but, since there was no proper response, a further advertisement was taken on 21.3.1999. Pursuant to the latter advertisement dated 21.3.1999, the appellant had offered Rs.165 lakhs and was willing to deposit 50% by May, 1999. On 22.4.1999, the Board of Directors passed a resolution authorising the President to execute the sale deed in favour of the appellant for the said amount. An agreement was executed in favour of the appellant accordingly and an advance of Rs.40 lakhs was received by the Company towards part consideration. Subsequently, an application in Form 37-I under Chapter XX C of the Income Tax Act, 1961 was filed before the appropriate Income Tax authorities. On 13.7.1999, the appropriate authority under the Income Tax Act issued No Objection Certificate for transfer of the property for the stated

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value of Rs.165 lakhs. As required under the agreement of sale, the appellant wrote to the Bank of Madura on 22.7.1999 regarding outstanding amount due to the Bank with a view to pay such amount to discharge the mortgage and secure the original documents of title, which were with the Bank. On 24.7.1999, the Bank gave a reply stating that the outstanding amount was Rs.67,97,895/- as on 25.7.1999 and interest at the rate of Rs.3,930/- per day is to be charged thereon. On 26.7.1999, Company Petitions, namely, C.P.Nos.233 to 238 of 1999 were filed by various creditors of the Company for winding up of the company under Section 433(e) of the Companies Act. On 31.7.1999, the Company confirmed the receipt of Rs.92 lakhs towards sale consideration. As per the agreement, balance amount towards consideration of Rs.165 lakhs was to be paid to the Bank of Madura towards the loan. On 3.8.1999, the Company received Clearance Certificate under Section 230-A of the Income Tax Act. On 13.8.1999, the Company through its President executed the sale deed, which was registered. At the time of registration of the sale deed, balance consideration amount had been paid retaining a sum of Rs.69,19,725/-, which was payable to Bank of Madura. On 7.9.1999, the High Court passed orders in the Company Petitions appointing a provisional liquidator under Section 450 of the Companies Act and also appointed a committee of inspection. On 9.9.1999, the appellant paid a sum of Rs.10 lakhs to the Bank towards part payment of dues of the Bank and thereafter, on 14.9.1999, the appellant called upon the Bank to indicate about the total outstanding. On 17.9.1999, the appellant tendered balance amount due to the Bank by way of Demand Drafts and requested for release of the original title deeds. However, the Bank expressed its inability to receive the balance amount and to release the title deeds. On 20.9.1999, the registration authorities raised a demand for payment of additional stamp duty on the basis of the guideline value of the property at Rs.346.61 lakhs. The Company paid additional amount of Rs.25,42,571/- under protest and without prejudice to its right to recover the said amount through legal proceedings. Thereafter, in October, 1999, the applicant filed C.A.Nos.2047 to 2052 of 2000 in pending C.P.Nos.233 to 238 of 1999, seeking appropriate directions from the Court. During pendency of such proceedings, the Bank filed an application seeking permission to call sealed tenders for disposal of the property and thereafter an advertisement was issued on 12.2.2001 as per the direction of the court with an upset price of Rs.225 lakhs, but no response was received.

3. In the report filed on behalf of the Official Liquidator, it was indicated as follows :-

The property had been purchased by the Company to run their Corporate Office. As per the report submitted by the Inspection Committee, it is shown that the property had been purchased out

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of borrowed funds and the interest on borrowings were shown as additions to the cost of the property and as per the records, the cost of the property was shown as Rs.3,18,57,889/, but the sale was effected for Rs.165 lakhs. The sale transaction was made beyond the date of balance sheet and was not reflected in the audited statements. The agreement dated 22.4.1999 was made within six months before the filing of the Winding up petitions and was void under Section 531-A of the Companies Act. The sale consideration of Rs.165 lakhs, urged against the cost of the property of Rs.3,18,57,889/-, was very low.

4. An affidavit was also filed on behalf of the Inspection Committee. In such affidavit it was indicated that the process of sale of property commenced on 22.4.1999 and by that time, Mr.P.G. Sarnyan had made all arrangements to wind up the company by voluntarily withdrawing a sum of Rs.23.00 crores from the Nidhi. "Therefore, the negotiation process of selling the property is yet another device adopted by Mr.P.G. Sarnyan to sell the company's properties for a very low consideration on paper / record and to receive the secrete the balance of market value by collecting the same in cash." As per the endorsement made by the Collector, the property was grossly under valued to the tune of Rs.1,81,61,115/- and the differential stamp duty of Rs.23,60,956/- was collected from the buyer. "This itself would clinchingly prove that the actual consideration agreed by the parties had not been disclosed in the sale deed and the property has been grossly undervalued for the purpose of obtaining orders from the I.T. Department u/s.269-UL(1) and the real consideration was not reflected in the sale deed". The sale agreement was on 22.4.1999 and the entire proceedings were completed on 31.8.1999, within a period of one year before the commencement of the winding up proceedings, and, therefore, the sale transaction was void against the Official Liquidator under Section 531-A of the Companies Act. The order passed by the Income Tax authorities under Section 269 does not shield the under valuation of the property. As per the Books of accounts of the company, value had been shown as Rs.3,18,57,889/- and the sale consideration of Rs.165 lakhs was grossly low. The real and the actual consideration would be much more than what was reflected in the sale deed.

5. A reply affidavit was filed on behalf of the appellant to the report of the Official Liquidator and the counter affidavit which had been filed on behalf of the Inspection Committee. In such reply affidavit, it was indicated that the plot in question was a very odd shaped plot, being a triangular plot with roads on three sides, and, therefore, value of the land was less. The real value of the land was less as vacant space has to be left on all the three sides. The

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guideline value is not based on any material and it was increased by the Government from time to time and since the document was to be released urgently, the appellant thought it best to pay the additional stamp duty under protest. The Income Tax authorities had made enquiries and being convinced that there had been no under valuation, granted permission to go ahead with the sale. The value of the property was at peak level in 1995, when the property was acquired by the Company for Rs.1,64,00,000/- with registration charges of Rs.23,00,000/-, and in the Books of accounts such amount along with interest at 23% had been shown from year to year, and, therefore, the accumulated figure was shown as Rs.3,18,00,000/-. However, there has been steep fall in the real property value after 1996. Moreover, the property had been mortgaged to the Bank. Keeping in view these things, proper consideration had been paid. At the time of liquidation, the property in question was not in possession of the company. The Company had advised for sale of the property long before filing of the petition for winding up and as there were pressing necessities to the Company to pay the depositors, who were pressing for refund of the money, and also for payment to the Bank. It was further indicated in the reply that, on 31.8.1998, a regularly shaped property very near to the disputed property in question had been sold to a builder for putting up apartments, wherein 4 grounds and 28 sq.ft of undivided share was sold for Rs.23,68,800/- and the value comes to Rs.2100/- per sq.ft., whereas the value of the disputed plot was Rs.1771.34 sq.ft.

6. At the time of hearing of such applications before the learned single Judge, learned counsel for the applicant/appellant had contended that the purchase was a bona fide transaction and for a valid consideration which reflected the prevailing market price, and, therefore, the transaction should be protected. Moreover, the transaction had not been entered into with a view to defraud the depositors or the creditors and no application could be maintained under Section 531-A of the Companies Act and the application was not hit by Section 53 of the Transfer of Property Act and cannot be challenged in the winding up proceedings. It was also pointed out that the applicant had applied to the Income Tax authorities under Section 269-UL(1) of the Income Tax Act and No Objection Certificate had been issued for transfer of property for a total consideration of Rs.165 lakhs and the Company had also secured a Certificate under Section 230-A of the Companies Act.

7. Learned counsel who was appearing for the Administrator had contended that the transaction was not a bona fide transaction as it was completed in a hurried manner for a low consideration, particularly, when the property had been purchased 4 years before the impugned transaction by incurring

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expenditure of about Rs.190 lakhs. It was further contended that in view of the location of the land, the property was a very valuable property and a sum of Rs.165 lakhs obviously did not reflect the market value. It was further submitted by him that the deficit stamp duty had been paid, which prima facie indicate that the original consideration indicated in the sale deed did not reflect the market value.

8. Learned single Judge observed that the following questions arose for consideration :-

> "(A) Whether the applicant is entitled to an order holding that the purchases made by the applicant from RPSB are valid and binding and they are not liable to be challenged in the winding up proceedings?
>
> (B) Whether the property in question has been sold bona fide, in good faith and in the interest of the company?
> (C) Whether the property has been sold for a fair market price? If not, whether it will reflect on the transaction as not bona fide? and whether there is any siphoning off the funds in the transaction by the Directors by selling it far below the market value?
> (D) Whether the sale has been effected with the intent to defeat the claims of the depositors and other creditors of the company and to benefit the applicant as well as the persons who were in management of RPSB?
> (E) Whether the applicants are entitled to an order as prayed for in all the applications?
> (F) Whether the sale transaction entered by the applicant is bona fide and valid and binding?
> (G) To what relief, if any?"

9. Learned single Judge found that :-

(a) At the material point of time, the Company was under heavy pressure and had been conducting its affairs not in the interest of the Company or its depositors but had been treating the assets of the company as if those were the private properties of P.G. Saranyan and his family members.

(b) The cost of the acquisition of the property as it indicated in the Application under Section 269-UL of the Income Tax Act was about Rs.3,18,57,889/- including the interest of Rs.1,28,36,956/- capitalised upto 31.3.1998, however, the appellant agreed, as per the sale agreement, to a sum of Rs.165 lakhs.

(c) The claim of handing over possession does not deserve to be accepted and it is false.

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(d) The application to the Income Tax authority was returned on 4.6.1999 and revised form 37.1 was filed. In such revised form, cost of acquisition including stamp duty had been set out as Rs.1,86,29,485/-, developmental expenses as Rs.3,91,488/- and interest capitalised at Rs.1,28,36,956/- had been concealed and "the certificate under section 230A had been managed on 3.8.1999".

(e) The applicant had paid the additional stamp duty on the market value as determined by the registering authority without any demur which was an abnormal conduct. Such conduct indicated that the applicant was aware of the market value and the difference between the apparent consideration and the actual market value had been siphoned off by RPSB or passed under the table to persons in management.

(f) The property had been sold at 50% of the book value and the applicant cannot claim that it was a bonafide purchaser for value.

(g) The Minutes Book had not been maintained properly and pages had not been numbered consecutively and loose sheets had been utilised and the resolutions were not bonafide resolutions passed in regular course of transaction and it cannot be said that the beneficiary was not aware of the infirmity in the resolution or designs or motive behind the transaction.

The conclusions as summarised in paragraph 49 are as follows:-

> "49. According to Official Liquidator the agreement entered between the company and the applicant is a fraudulent preference and the sale is void in law. The Liquidator relies upon Section 531-A of the Companies Act. The request of the applicant to treat the sale executed by the company as valid does not deserve any further consideration and it deserves to be dismissed. The contention that the plot was odd sized or that sufficient space has to be left for purchase of promotion of construction cannot be countenanced. The location of the plot which is in the heart of the town should not be lost sight of. The very fact that without any demur substantial sum has been paid by the applicant without protest towards additional stamp duty would not only show the market value, but also the transaction has been entered far less than the purchaser market value and it has been entered collusively only with a view to deceive the creditors, to give preference to a set of creditors or Directors choice. The fact that under

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Section 47-A without any demur the entire deficit stamp duty has been paid on the very date on which sale deeds were presented itself, is a fact which reflects on the applicant. The contention that there is a steep fall in the real estate market cannot be countenanced at all. It may be that there may not be any shooting up of the prices. But there was no fall in prices, much less, as sought to be made out. The contention that the property was not a property of the company on the date of filing of the company petition is a misconception and it runs counter to the statutory provision namely Section 531.A of the Companies Act. Assuming for purpose that the entire sale consideration has been applied for discharge of certain depositors and there is no fraud, but there is not material at all to show that the entire sale proceeds had been utilised to discharge the liability of the company or the depositors. No particulars have been furnished. The property has been undervalued and deficit stamp fee of Rs.23,60,956/- has been determined and paid without any demur by the applicant in terms of Section 47-A. That apart, at or about the same time, the Directors in control of RPSB have drawn huge sum to the tune of Rs.23,00,000/- from the RPSB and there is no account or explanation for the same. Even if the appropriate authority had given the approval for the transaction, the same cannot shield the transaction which is fraudulent transaction. The very permission granted by the appropriate authority is rather strange and requires to be examined by a competent authority. Less said is better with respect to Income Tax Department, who accorded permission as well."

On the basis of the aforesaid conclusions, the learned single Judge upheld the submission made by the Administrator and negatived the contentions made by the applicant and rejected such applications.

10. Learned counsel appearing for the appellant has submitted that the order of the learned single Judge is based on surmises and conjectures without considering certain basic aspects applicable to such cases. Particularly, the counsel has pointed out that the observation "The certificate under section 230-A had been managed on 3.8.1999" is a pure surmise in respect of an order passed by a statutory authority under the Income Tax Act. Similarly, according to the learned counsel appearing for the appellant the observation in paragraphs 38, 39 and 40 to the effect that the applicant paid the enhanced stamp duty without any demur on the very same day on which the sale deed was registered, is a clear error of record. He has submitted that in

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fact the sale deed was registered on 13.8.1999, but the notice regarding payment of higher stamp duty was on 20.9.1999. Moreover, while making such payment of additional stamp duty, the applicant had raised objection by writing a letter of protest, and, therefore, it cannot be said that it was without any demur. Similarly the observation of the learned single Judge that the plot was a rectangular plot is clearly an error of record as the sketch map clearly points out that the plot was not a rectangular plot by any stretch of imagination. Learned counsel further pointed out that apart from the above series errors of record, and conjectures and surmises, the learned single Judge has not kept in view the fact that the money paid by the appellant had been utilised by the company for repaying the creditors, and the Company itself had advertised for sale of plot on two occasions much before the initiation of the proceedings for the winding up and the transaction was completed only pursuant to such advertisement, which clearly indicated that the appellant was a bona fide purchaser. It has been further contended that the mere fact that the guideline value was more or Book value of the property was more cannot be considered as sufficient to come to a conclusion that the market value had not been indicated in the sale deed, more particularly when there was a recession in the market value during the particular period. Learned counsel also pointed out that the observation of the learned single Judge in paragraph 42 that the transaction had been entered with an intention to throw away the property and siphon of the difference for the benefit of the individual directors by pocketing a sizeable amount in cash and the applicant is a party to such a transaction, is purely a surmise and conjecture without any basis. It has been further contended that the very fact that no bidders had given any offer even when the Bank had advertised pursuant to the direction of the Court itself clearly indicated that there had been no under valuation.

11. Learned counsel appearing for the Official Liquidator, while supporting the conclusions of the learned single Judge, has submitted that various resolutions relied upon by the applicant / appellant were not serially numbered nor properly maintained as contemplated under Sections 192, 193, 194 and 195 of the Companies Act and no sanctity is attached to the so called resolutions. It has been further submitted by him that even though the additional stamp duty had been paid on a later date and not on the date of the sale deed, the facts indicate that there was no real protest regarding valuation and the applicant paid the differential amount. It has been submitted by him that if the applicant was not convinced about the market value and the differential amount claimed by the Collector, he could have taken legal steps to get return of the documents instead of paying a huge sum of about Rs.23 lakhs as additional

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stamp duty and such conduct only indicated the undue haste on the part of the applicant. Moreover, the Books of account as well as the guideline value clearly indicated that the valuation of Rs.165 lakhs was obviously more low. It has been pointed out by him that the so called delivery of possession, before clearance certificate was given by the Income Tax authorities, cannot at all be countenanced and it was never indicated to the Income Tax authorities that possession was taken and it is only an after thought. It is further submitted that the very fact that the title deeds were with the Bank and yet the applicant and the Directors proceed to complete the transaction in a hot-haste manner indicated their anxiety to complete the transaction. It has been further indicated that as per the agreement, possession was to be given at the time of registration and in fact the recital in the sale deed does not indicate giving possession on an earlier date, and thus evident that possession was not delivered on such date as has been claimed.

12. On the question of bona fides of the transaction and burden of proof, learned counsel appearing for the appellant has relied upon several decisions, particularly, including a few decisions under the Provincial Insolvency Act.

In A.I.R. 1958 SC 1 (N. SUBRAMANIA IYER v. OFFICIAL RECEIVER, QUILON AND ANOTHER) it was observed :-

> "(10) The finding on the question of consideration being entirely in favour of the appellant-mortgagee, the only other serious question which remains to be considered is whether the transaction was bona fide. We have already indicated that it is settled law not only of the Insolvency Acts in England but also in this country that it is not necessary in annulment proceedings to prove that that the transferor who has been subsequently adjudged an insolvent should have been honest and straightforward in the matter of the transaction impeached.
>
> If he was really so, there would not be much difficulty in coming to the conclusion that the transaction as a whole was bona fide. Even if the mortgagors were wanting in bona fides and assuming that to be so in the present case, the crucial question still remains to be answered. Unless it is found that the transferee was wanting in bona fides in respect of the transaction in question, he cannot be affected by the dishonest course of conduct of the transferor."

13. The aforesaid decision of the Supreme Court has been followed by a learned single Judge of Bombay High Court reported in 1992 VOL.74 COMPANY CASES 89 (MONARK ENTERPRISES v.

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KISHAN TULPULE AND OTHERS), wherein it was observed :-

> "... The next question which arises is whether the company had entered into the transaction dated February 18, 1987, with Monark Enterprises with a view to preferring one creditor to another creditor and that too fraudulently. The question which arises for consideration of the court is whether the company entered into the said transaction as a result of lawful pressure exercised by Monark Enterprises to recover its legitimate dues forthwith."

14. Learned single Judge in the aforesaid decision, has also placed reliance upon the decision of the Gujarat High Court in MANECKCHOWK AND AHMEDABAD MFG. CO. LTD., IN RE{(1970) 40 Comp Cas 819, 847}, where it was observed that if the transaction was done not with a view to prefer one of the creditors but to save one's own skin, the transfer could not, in such circumstances, be treated as a fraudulent preference.

15. In A.I.R 1962 Calcutta 405 (In the matter of, J. SEN GUPA PRIVATE LIMITED, (In Liquidation), it was has held as follows:

> "(12) It seems to me, therefore, upon considering various authorities on this subject that the following principles are doubtless applicable to sub-sec.(2) of Sec.536 of the Companies Act, 1956:
>
> 1. The Court has an absolute discretion to validate a transaction.
>
> 2. This discretion is controlled only by the general principles which apply to every kind of judicial discretion.
>
> 3. The court must have regard to all the surrounding circumstances and if from all the surrounding circumstances it comes to the conclusion that the transactions should not be void, it is within the power of the court, under Sec.536(2) to say that the transaction is not void.
>
> 4. If it be found that the transaction was for the benefit of and in the interests of the company or for keeping the company going or keeping things going generally, it ought to be confirmed."

16. The aforesaid decision of the Calcutta High Court was followed by Gujarat High Court in 1986 VOL.60 COMPANY CASES 897 (In re ADYODAYA SPINNING AND WEAVING CO. LTD., v. In re SIMKA ENGINEERING CO.), where it was observed:-

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"... So far as the fifth objection is concerned, it was vehemently submitted that the transactions in question which are sought to be validated have not been bona fide entered into for the purpose of running the concern and hence, these applications deserve to be rejected. It is not possible to agree with the aforesaid contention of the objecting creditors. It is now well settled that the object of sub-section (2) of section 536 of the Act is to prevent improper disposition or dissipation of property so as to affect the assets otherwise available for distribution among the creditors of a company in winding-up. But the court has a discretion to uphold all proper transactions. Accordingly, in the event of a winding-up order being made, all transactions since the commencement of the winding-up will be subjected to scrutiny by the liquidator who will take appropriate proceedings to have them declared void or valid by the court. the court usually validates transactions which are honest and in the ordinary course of the company's business. The expression "unless the court otherwise orders" casts a duty on the judge requiring that "each case must be dealt with on its own facts and particular circumstances, special regard being had to the question of the good faith and honest intention of the persons concerned" and the court is free to act according to the judge's opinion of what would be just and fair in each case.

17. In 1987 (Supp) SCC 167 (CHITOOR DISTRICT CO-OPERATIVE MARKETING SOCIETY LTD. v. M/s. VEGETOLS LTD., AND ANOTHER), the appeal was against the order refusing to validate the repayment made to the appellant-society by a private limited company being one of its debtors subsequent to the date on which a petition for its winding up was presented by one of its creditors. The Supreme Court observed as follows :-

"3. Counsel for the appellant next contended that in any view of the matter the High Court should have in exercise of its powers under Section 536(2) of the Indian Companies Act validated the repayments. Insofar as the payments which have been made after the winding up order was passed, the appeal against the winding up order having been dismissed,it is futile to contend that any payments made during the interregnum should be validated. There is also no evidence to show that these payments were made in a bona fide manner under a commercial compulsion in the course of transactions necessitated for the running of the business. There is nothing to show that if the payments to the appellant-

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society were not made the business could not have been run. In fact, the running of the business would result in loss of liquidity and its operations would have been hampered by making these payments. It is not shown that there was any compulsion and the payments were made either in order to save the property from being sold or that there was any commercial compulsion. Under the circumstances, the view taken by the High Court must be confirmed.

4. With regard to the payments made prior to the date of the winding up order also there is no evidence to show that these payments were made either under compulsion of circumstances in order to save or protect the property of the company or that there was any commercial compulsion to enable it to run its business. The High Court was, therefore, right in refusing to validate these transactions which were not shown to have been made for the benefit of the company."

18. In AIR 1963 SC 1150 (C. ABDUL SHUKOOR SAHEB v. ARJI PAPA RAO (DECEASED) REP. BY HIS LEGAL REPRESENTATIVES AND OTHERS), while considering the question whether the plaintiff was a bona fide purchaser for value so as to be protected by the second paragraph of Section 53(1) of the Transfer of Property Act, it was observed :-

"17. ... The narrow question is whether the plaintiff was a transferee in good faith. It was submitted on behalf of the appellant that the learned Judges of the High Court had directed the dismissal of the plaintiff's suit even without a definite finding that the plaintiff was a party to the fraud on the part of the transferor to defeat or delay the creditors. There might be some force in this submission that there is no specific finding to that effect but that does not in any way assist the appellant. Where fraud on the part of the transfer is established i.e. by the terms of paragraph (1) of Section 53(1) being satisfied, the burden of proving that the transferee fell within the exception is upon him and in order to succeed he must establish that he was not a party to the design of the transferor and that he did not share the intention with which the transfer had been effected but that he took the sale honestly believing that the transfer was in the ordinary and normal course of business. When once the conclusion is reached that the transfer was effected with the intent on the part of the transferor to convert the property into cash so as to defeat or delay his creditors there cannot be any doubt on the evidence on

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record that the plaintiff shared that intent.

. . .

18. In the circumstances, it stands to reason that the plaintiff must be fixed with notice of the design in pursuance of which the transfer was effected. If the object of a transferor who is heavily indebted was to convert his immoveable property into cash for keeping it away from his creditors and knowing it the transferee helped him to achieve that purpose it has naturally to be held that he shared that intention and was himself a party to the fraud. In this connection, there is one circumstance, which is rather significant. Even when the plaintiff was fixed with notice that the firm's business had been running at a loss had accumulated a very large volume of debts as disclosed by the recitals in the deed of dissolution which was placed in his hands, the purchaser did not insist that the consideration which he was paying should be utilised for the discharge of at least some of the debts. We are therefore satisfied that the plaintiff was not a transferee in good faith and that the transfer itself was a scheme by the transferor with the knowledge and concurrence of the transferee to put the property out of the reach of the creditors. The result therefore would be that the plaintiff's suit was liable to be dismissed for the reason that the defence plea invoking Section 53 (1) of the Transfer of Property Act was made out."

19. There is no quarrel over the proposition of law enunciated in the several decisions, particularly of the Supreme Court. The question is whether in the facts and circumstances of the present case it can be said that the appellant is a bonafide purchaser and whether the transaction was in good faith.

20. The submissions made by the learned counsel for the appellant to the effect that certain observations made by the learned single Judge are not borne out by records and based on surmises and conjectures is justified to certain extent. For example, the observation of the learned single Judge that the purchaser was called upon to pay the additional stamp duty on the date of registration of the document is an erroneous observation. As a matter fact, the materials on record indicate that after the sale deed was presented and registered, the registering authority had apparently called upon the purchaser to pay additional stamp duty and had with held the document. Subsequently, the purchaser wrote a "letter of protest" to the Collector and paid the additional stamp duty and obtained the document from the Registration Office. Therefore, to the above extent, the observation of the learned single Judge may not be strictly

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correct. However, the fact remains that when the purchaser was called upon to pay the additional stamp duty, even though he has written a letter indicating "protest", additional stamp duty has been paid. Learned counsel for the appellant has submitted that as the appellant wanted to get the document without any further delay, the appellant had paid the amount. Such submission does not appear to be justified. If the appellant was actually convinced that the market value had been paid and the stamp duty had also been correctly paid by the appellant, the appellant could have taken legal steps to get custody of the document. The procedure contemplated under Section 47-A of the Stamp Act relating to demand and payment of additional stamp duty is quite well known, and in a series of decisions, it has been held that the registering authority has no jurisdiction to retain a document merely because a matter has been referred to the appropriate authority for considering the question of appropriate stamp duty. Therefore, even though the learned single Judge had erroneously concluded that on the date of registration, additional stamp duty had been called for, such erroneous conclusion does not alter the basic fact that the payment of additional stamp duty had been made without any real protest, even though a "letter" had been written by the appellant. It has to be remembered that the additional stamp duty demanded was not a small amount and the appellant paid stamp duty of about Rs.23 lakhs. Therefore, there is enough justification in the submission made by the counsel for the respondent and for the ultimate conclusion of the learned single Judge that the appellant was aware that consideration of Rs.165 lakhs did not correctly reflect the market price of the property. Otherwise the protest of the appellant would have been more vigorous. It can be concluded that even though there was a "show of protest", no real protest had been made.

21. Similarly, the assumption on the part of the learned single Judge that the permission from the Income Tax authority has "been managed" may not be justified. In the absence of any positive material or circumstances, it could not be assumed that the order, which was passed by the appropriate Income Tax authority, was based on any irrelevant material or any inappropriate consideration. However, even assuming that the permission granted was regular, such permission does not have the effect of being a conclusive order in the matter relating to market value of the property. The Income Tax Act nowhere prescribes any detailed procedure to come to any particular conclusion regarding the market value of the property sought to be sold. The conclusion is only an adhoc conclusion regarding the prima facie value.

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22. The next contention is to the effect that the learned single Judge should not have considered the guideline value as true reflection of the market value.

23. Learned counsel appearing for the appellant has relied upon several decisions in support of his contention that the guideline value, which is circulated by the Government for the purpose of collection of stamp duty at the time of registration of a document, does not necessarily reflect the market value of the property, including the decisions reported in AIR 2004 SC 692 (R. SAI BHARATHI v. J. JAYALALITHA AND OTHERS) and JT 1994 (2) S.C. 604 (JAWAJEE NAGNATHAM v. THE REVENUE DIVISIONAL OFFICER, ADILABAD, A.P.,etc.).

In the latter decision, it was observed :-

> "... It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for Registration. Equally it would not be a basis to determine the market value under section 23 of the Act, the lands acquired in that area or town or the locality or the Taluk etc."

The said decision was followed by a learned single Judge of this Court in 1999-2-LW.250 (A. VIJAYARAGHAVAN AND 2 OTHERS v. THE MEMBER SECRETARY, CMDA., AND ANOTHER).

24. In AIR 2004 SC 692 (cited supra), it was observed:-

> "25. . . . It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of it at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of Stamp Act guidelines value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other."

25. In 2003-3-L.W.459 (COIMBATORE DISTRICT REAKL ESTATE PROMOTERS' ASSOCIATION, REP. BY ITS PRESIDENT v. THE STATE OF TAMIL NADU, REP. BY ITS SECRETARY, REGISTRATION DEPARTMENT AND 7 OTHERS), after referring to many such decisions, the learned single Judge observed as follows :-

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"50. In the circumstances, this Court holds thus:

On Points (i), (ii) and (iv): The guideline value Register entries are neither final nor conclusive nor it is binding on the Registering authority as well on the Collector to whom the instrument is referred for valuation under Section 47(A) and the Collector has to follow the procedure prescribed while assessing the value of the subject matter covered by the instrument and levy stamp duty independently and without in any manner being influenced by the "guidelines Register".

On Point (iii) this Court holds that the guidelines Register is merely an indication for the Registrar to proceed further while registering instruments falling under Section 47A of the Indian Stamp Act.

On Points (v) and (vi): This Court holds that the entries in the guidelines Register is not enforceable nor the Registering authority could insist to pay difference in stamp duty payable based upon guidelines Register, but has to refer the instrument to the Collector under Section 47A read with the rules."

26. It is of course true as has been held in several decisions that the guideline value as laid down by the Government cannot be taken as the sole basis for determining the market value for all purposes. However, guideline value can be a relevant factor. If the conclusion of the learned singe Judge that the property had been sold much below the market price had been based only on the guideline value, we would have differed from the conclusion that the property had been sold much below the market value. However, apart from the guideline value, which was more than double the value indicated in the sale deed, there are other materials on record which clearly indicate that the consideration amount did not reflect the market value of the property. It has to be remembered that the property had been acquired by the company for a consideration of Rs.164 lakhs about 5 years before the impugned transaction and the company had to pay about Rs.23 lakhs towards stamp duty and further amount towards other incidental expenses. Therefore, the company had spent about Rs.190 lakhs for acquisition of the property in the year 1995. In the absence of specific materials, we are not impressed by the submission made by the learned counsel for the appellant that there was recession in the real estate market, and therefore, the present consideration amount of Rs.165 lakhs should be taken as correct reflection of the market value. In the books of accounts of the company, the value of the property had been shown to be about Rs.3.18 Crores. This was mainly because of the fact that the property was acquired with the borrowed funds and the interest on borrowings were shown as additions to the cost of the property. The submission that an

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inflated amount had been shown in the Books of Account does not commend itself to us. However, even assuming that the Books of accounts did not actually reflect the market value, by no stretch of imagination it can be held that the company had acted in any prudent manner by selling the property without recovering the basic cost for obtaining such property, which was in the vicinity of Rs.190 lakhs including the stamp duty.

27. Learned counsel appearing for the appellant has submitted that a sale deed of the year 1998 had been produced which indicated roughly about the market value of the present property. He has submitted that such property was sold at a rate of slightly more than Rs.50 lakhs per ground in the year 1998, as such property was in rectangular shape, whereas the present property had an odd shape. It is of course true that the observation of the learned single Judge that the present property is in rectangular shape may not be strictly justified, but even then keeping in view the admitted location of the present property it cannot be said that the valuation of this property was in any way less than the valuation of the property which was sold in the previous year for more money. Even accepting the valuation indicated in such sale deed relied upon by the appellant itself, it is obvious that the consideration indicated in the sale deed is less than the market value. Therefore, the ultimate conclusion of the learned single Judge that proper market value of the present property had not been reflected in the sale deed can not be said to be erroneous.

28. Learned counsel for the appellant has submitted that so far as the appellant is concerned, it is a purchaser for value in good faith, and, therefore, the transaction is required to be protected. His submission is that since the agreement of sale had been executed prior to the presentation of the winding up application and even though the transaction had been completed subsequently after winding up petition had been filed, such winding up petition may be considered in the light of the provisions contained in Section 531-A and not Section 536 of the Companies Act.

29. Even assuming such submission to be correct, it is required to be tested whether the transaction can stand scrutiny of Section 531-A. In the present case, it is already found that the consideration indicated in the sale deed did not reflect the market value. Even though two advertisements had been made, nothing had been brought on record by the appellant to indicate the process of negotiation. It is not clear as to whether the appellant had given any offer pursuant to any of the advertisements. It may be that the appellant was not in a position to bring on record the offers, if any, made by any other

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intending purchaser, but, if the appellant had made any offer, obviously, the appellant would be in possession of such document which could have been produced.

30. Learned single Judge has concluded that the transaction was completed in a hurried manner. Certain telltale features clearly support such conclusion of the learned single Judge.

31. Admittedly, the title deeds were with the Bank of Madura. Without bothering to obtain the title deeds, the appellant paid about Rs.92 lakhs for completing the transaction. It is of course true that in the sale deed itself there is a recital that the appellant had retained a sum of about Rs.69 lakhs with an undertaking to pay such amount to Bank and to obtain title deeds. Under normal circumstances, one would expect a prudent purchaser to get a clear title by repaying the loan of Bank of Madura and get the title deeds. Therefore, one could have expected the appellant to insist upon the clearance of the debt of Bank of Madura first and instead of paying to the Company, the payment could have been made to Bank of Madura.

32. Learned counsel appearing for the appellant has also submitted that possession had been taken in the month of May, 1999. In the resolution itself there is no indication that possession would be given to the purchaser even before completion of the transaction. By the time of alleged delivery of possession on 19th May, 1999, not only a substantial amount was to be paid, but also clearance from the Income Tax authorities was yet to be obtained. If actually possession was delivered on the said date, it is obvious that the recital before the Income Tax authorities that possession was yet to be delivered was false. Similarly, there is a recital in the sale deed that possession was delivered on the date of execution of the sale deed which militates against the alleged delivery of possession on 19th May, 1999. If the present contention is accepted, it is obvious that a false recital was made before the Income Tax authorities because delivery of possession itself would amount to completion of the transaction for the purpose of Income Tax Act which possibly would have invited some adverse orders from the Income Tax authorities. If actually there was delivery of possession on 19.5.1999, it is not understood as to why in the sale deed there was no recital that possession was already delivered on such date. In such state of affairs it is difficult to accept that possession was delivered earlier and it is thus obvious that the letter had been subsequently created to show as if possession had been delivered in the month of May, 1999, before presentation of the application for winding up. If it is actually taken that possession was delivered on 19.5.1999, the so called permission

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from the Income Tax authorities was obtained on wrong information. If actually possession was delivered on the date of execution of the sale deed, as per the clear recital in the sale deed, it is thus obvious that a letter had been created to show possession was delivered on an earlier date. In either event this reflects adversely upon the claim made by the appellant that it was a bona fide purchaser for value.

33. Learned counsel appearing for the appellant has submitted that a valid agreement had been entered between the parties much prior to the initiation of winding up proceedings and on the basis of such agreement, the appellant could have enforced a right to obtain the sale deed, and, therefore, merely because a sale deed was effected after presentation of the winding up proceedings, such transaction should not be invalidated. If a person, who has entered into an agreement, wants specific performance of the contract against a company after winding up proceedings was started, the matter could be examined by the Court on the basis of the materials on record. The hurried attempt made by the appellant as well as the company to complete the transaction, obviously, is not a point in support of the claim of the good faith of the appellant.

34. Learned counsel for the appellant has also submitted that the amount paid by the appellant to the company had been in fact utilised for repaying the maturity value of various depositors/creditors, and, therefore, the transaction must be taken to be a bona fide transaction in the interest of the company. In the absence of any convincing materials on record, it is difficult to accept such submission. On the other hand, the report made by the Official Liquidator before the learned single Judge indicated that at or about such time, lot of money had been withdrawn by the Founder/Managing Director of the Company. In the absence of any specific evidence, it is difficult to hold at this stage that the money received from the appellant was in fact used for the benefit of the depositors/creditors and not for the benefit of the Directors or the Managing Director.

35. Learned counsel for the appellant relying upon the decision of the Bombay High Court as well as the Gujarat High Court had contended that the burden was on the Liquidator to prove absence of good faith in the transaction. In law, such submission may be correct, but, in the present case, the matter has not been decided on the basis as to whether onus has been discharged or not, but on the discussion of materials on record. In view of the several suspicious circumstances, the learned single Judge had come to the conclusion that the transaction cannot be protected. In our opinion, even applying the standard

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applicable to Section 531-A of the Companies Act, the present transaction cannot be sustained.

36. In our opinion, the decision of the Bombay High Court is not applicable to the peculiar facts and circumstances of the present case. In the present case, the consideration amount appears to be on the lower side and, if the value in the book of accounts is taken into account, the consideration appears to be even less than 50%. Possession of the property had not been delivered, but subsequently colour is being given as if possession had been delivered. There is nothing on record to show that the transaction was made in view of any pressing necessity in normal course of business.

37. Learned single Judge has referred to an earlier observation of a learned single Judge in other matters relating to fraudulent action of the Directors of the company and as to how innumerable depositors had been duped. Even though the appellant may not be a party to any such fraud, the question of upholding the transaction in his favour should be considered by weighing carefully the interest of innumerable depositors as well as the individual concerned, namely, the appellant. It may be that the appellant itself has now become a victim of circumstances. However, when the competing interest of innumerable depositors and the appellant is taken into consideration, the Court should lean in favour of a conclusion which would have the effect of protecting innumerable depositors.

38. Learned counsel for the appellant has also submitted that after filing of the winding up petition, the Bank of Madura had been called upon to advertise the property for sale, but no offers were forthcoming, and, therefore, the transaction made by the appellant is required to be upheld. When a matter comes to the court and the property becomes a disputed property, ordinarily there would be hesitation on the part of the bidders to enter into any transaction because of fear of legal wranglings. From the mere fact that sufficient offers were not made or the offers made were not much higher than the amount indicated in the sale deed, is not a ground to uphold the transaction.

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39. A contention was raised that in the absence of any application filed by the Liquidator to invalidate the transaction, the transaction should be upheld and the appellant should be permitted to pay the amount to the Bank and take return of the title deeds. Whether the appellant would pay the outstanding amount to the Bank and get the original title deeds from the Bank is a matter between the appellant and the Bank which may not strictly come within the jurisdiction of the

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Company Court. So far as the validity of the transaction is concerned, it is true that no formal application had been filed by the Liquidator to avoid the transaction. Apart from the question as to whether such formal application was necessary, in the present case, the appellant itself has sought for such a declaration and the matter has been judged accordingly. Therefore, it is futile to contend that in the absence of any formal application by the Liquidator, the transaction should be upheld bereft of the bona fides of the transaction.

40. For the aforesaid reasons, we are unable to accept the submissions made by the counsel for the appellant, even though we have found that some of the reasonings given by the learned single Judge were not strictly in order. The appeals are accordingly dismissed, however, without any order as to costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Sub Asst.Registrar, Original Side, High Court, Madras.

+ 1 cc to Mr.M.Muthusamy, Administrator SR No.41754

+ 6 ccs to Mr.A.R. Karunakaran, Advocate SR No.41853

PV(CO)
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COMMON JUDGMENT IN
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